

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PROJECT VERITAS and PROJECT
VERITAS ACTION FUND,

Plaintiffs/Counterclaim-Defendants,

v.

JAMES O'KEEFE and TRANSPARENCY
1, LLC d/b/a O'KEEFE MEDIA GROUP,

Defendants/Counterclaim-Plaintiffs.

Civil Action No. 7:23-cv-04533

**COUNTERCLAIMANTS O'KEEFE'S AND OMG'S
MOTION FOR ORDER AUTHORIZING ALTERNATIVE
SERVICE OF SUBPOENA FOR THIRD PARTY THOMAS O'HARA**

Counterclaimants JAMES O'KEEFE and TRANSPARENCY 1, LLC d/b/a O'KEEFE MEDIA GROUP (collectively "Counterclaimants" or "OMG"), hereby move this Court pursuant to Fed. R. Civ. P. 45 for an order authorizing alternative service of its Subpoena for Deposition Duces Tecum upon third party Thomas O'Hara via electronic service and in support state:

The present dispute between Counterclaim Defendants, Project Veritas and Project Veritas Action Fund, and Counterclaimants, James O'Keefe and O'Keefe Media Group, as exemplified through counterclaims [Doc. 73], and proposed amended counterclaims [Doc. 176] hinges on the actions of a few central characters. Thomas O'Hara, former Project Veritas Chief Financial Officer, is one of the central characters.

Mr. O'Hara is directly involved in the events leading to Mr. O'Keefe's separation from Project Veritas and is indisputably connected to key facts and evidence.

Counterclaimants have made multiple good faith attempts to serve Mr. O'Hara with a Subpoena for Deposition Duce Tecum. First, Defendants coordinated with Plaintiffs' counsel to set Mr. O'Hara's deposition and issued a Subpoena for deposition on November 14, 2024 (attached as **Exhibit A**). OMG was unable to serve Mr. O'Hara at a Delaware address. Counterclaimants' counsel issued another Subpoena for deposition on April 30, 2025, and unsuccessfully attempted to serve the Subpoena on Mr. O'Hara at the same address in Delaware. (See Subpoena and Affidavit of Non-Service attached as **Exhibits B-C**). Counterclaimants then issued a third Subpoena for Mr. O'Hara's deposition on June 26, 2025, and service was attempted multiple times in May and June at his Pawling, NY address and at an address of employment in New York, New York. Counterclaimants have confirmed Mr. O'Hara is a property owner at the Pawling, New York address, in addition to obtaining a work e-mail for Mr. O'Hara. (See attached Subpoena, e-mail re non-service, and Non-Service Affidavit from process server attached as **Exhibits D-F**).

Counterclaimants also emailed Mr. O'Hara on June 10, 2025, at the email address provided by Mr. O'Hara on his resume, with a copy of the Subpoena for Deposition Duces Tecum and asked Mr. O'Hara to accept service. (See Email dated June 10, 2025, attached as **Exhibit G**). Counterclaimants' counsel has not received a response from Mr. O'Hara confirming receipt or accepting service. Counterclaimants have also verified that

Mr. O'Hara maintains an active LinkedIn profile.¹

In alignment with the principle that rules should be interpreted and applied to ensure the fair, prompt, and cost-effective resolution of all cases (*see, Cordius Trust v. Kummerfeld*, 45 Fed. R. Serv. 3d 1151, 2000 WL 10268, at *2 (S.D.N.Y. Jan. 3, 2000), *quoting Fed. R. Civ. P. 1*), courts have authorized alternative service methods in circumstances where personal service has been repeatedly unsuccessful (*see also, SEC v. David*, No. 19-cv-9013, 2020 WL 703464, at *1-2 (S.D.N.Y. Feb. 12, 2020)) or when discovery deadlines are imminent (*see, In re Petrobras Securities Litig.*, No. 14-CV-9662, 2016 WL 908644, at *1-2 (S.D.N.Y. Mar. 4, 2016) (Rakoff, J.)).

Counterclaimants have made multiple good faith attempts to serve Mr. O'Hara with a subpoena commanding his attendance at deposition and have patiently coordinated dates with Counterclaim-Defendants' counsel to allow for such deposition. Discovery deadlines are imminent. Depositions and all discovery is to be completed by August 15, 2025, according to the Court's Minute Entry following the hearing before Magistrate Judge Andrew E. Krause on June 9, 2025.

WHEREFORE, Counterclaimants respectfully request that the Court enter an order authorizing alternative service of its Subpoena for Deposition Duces Tecum upon third party Thomas O'Hara via certified mail to Mr. O'Hara's residence and place of employment in New York, email and/or LinkedIn. Counterclaimants further request that the Court adjust the deposition schedule such that Mr. O'Hara's deposition be reset for

¹ <https://www.linkedin.com/in/thomas-o-hara-1a7b90260/>

August 6, 2025, and all such other relief as the Court deems just and proper.

Dated: June 26, 2025.



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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document (including any attached exhibits and documents) electronically with the Clerk of the Court using CM/ECF on June 26, 2025 which served same electronically upon all counsel of record.

/s/ Nicholas P. Whitney
Attorney